IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

DE'ANGELO WIGGINS 6054 ANDOVER BLVD. GARFIELD HEIGHTS, OH 44125 Plaintiff -vs- Ptl. DAVID DUPONT (Badge 3421) Individually and in his official capacity CITY OF GARFIELD HEIGHTS 5555 TURNEY ROAD GARFIELD HEIGHTS, OH 44125 -and- Ptl. TIMOTHY TATULINSKI #006 Individually and in his official capacity CITY OF GARFIELD HEIGHTS 5555 TURNEY ROAD GARFIELD HEIGHTS, OH 44125 -and- CITY OF GARFIELD HEIGHTS 5555 TURNEY ROAD GARFIELD HEIGHTS, OH 44125 Defendants	)	CASE NO. JUDGE **COMPLAINT** **(JURY DEMAND ENDORSED HEREON)**

INTRODUCTION

1. This case is brought to address violations and injuries stemming from the misconduct of various police officers and other officials in connection with the unlawful assault, battery and use of excessive force against Plaintiff De'Angelo Wiggins while Mr. Wiggins was being question about his presence on Church property. Plaintiff was unarmed, and being

removed from a vehicle when the police violently and forcefully threw him to the ground and hit him in the face with his flashlight. As a consequence of the Defendants' conduct, Mr. Wiggins suffered severe and permanent physical injuries, as well as emotional injuries, and other economic and non-economic losses.

PARTIES AND JURISDICTION

2. Plaintiff De'Angelo Wiggins is a citizen of the United States and resides in Garfield Heights, Ohio.

3. Defendant David DuPont was at all times relevant herein employed as a police officer for the City of Garfield Heights Police Department. He was acting under color of state law. He is being sued in his individual as well as his official capacity.

4. Defendant City of Garfield Heights is a municipal corporation duly organized and operating under the laws of the state of Ohio.

5. John Does 1-5 ("Does") are those individuals and entities who, at all relevant times worked for the City of Garfield Heights and other law enforcement and/or government officials whom were involved in the incident that is the subject of Plaintiff's Complaint, including but not limited to taking part in Mr. Wiggins's arrest and/or assault. Some of these individuals are also policy makers or were deliberately indifferent to an obvious need for corrective action.

6. This action is brought pursuant to claims arising under the laws of the State of Ohio, 42 U.S.C. § 1983, and the Fourth and Fourteenth Amendments to the United States Constitution. This action is also brought pursuant to 28 U.S.C. §§ 1983, 1985 and 1988 as it is also an action for compensatory damages, punitive damages, and attorney fees.

FACTS

7. Plaintiff Mr. De'Angelo Wiggins is a non-violent young man who has lived in the City of Garfield Heights for the majority of his life.

8. On or about December 20, 2016, Mr. Wiggins was at was at the open gym for basketball at Saint John's Church Road, located at 11333 Granger Road, Garfield Heights, Ohio.

10. At some point, Mr. Wiggins and two other males were asked to leave the premises for not locking up their belongings.

11. Mr. Wiggins and two other males obtained the keys from their friends car and decided to wait in the heated car while their friend finished with his basketball game

12. An employee of the church did not want Mr. Wiggins and his friends to remain in the parking lot so she called the police to have them removed.

13. Officer Dupont arrived and banged on the window of the vehicle. As Mr. Wiggins opened the car door to exit the vehicle, Officer Dupont grabbed him and slammed him to the ground.

14. Officer Dupont then violently struck Mr. Wiggins on the side of his head with his heavy police issue flashlight and stomped on Mr. Wiggin's hands with his boot.

15. Officer Dupont then placed Mr. Wiggins in handcuffs and sat him in the police cruiser.

16. Another officer then pulled out his Taser and held it on the two other individuals.

17. In an effort to cover-up this misconduct, the Garfield Heights Police officers Dupont and Officer Tatulinski misrepresented facts in the post-arrest investigative report. The report states: "Wiggins fell on the ice and swept out officer Dupont's legs out from under him. Officer Dupont fell onto Wiggins and was holding a flashlight in his hand." The reporting officers Dupont and Tatulinski also stated in his report, "There was an unintended contact

with Wiggins head and the flashlight during the fall and also there was contact with Wiggins head and the ground during the struggle."

18. Mr. Wiggins was cited for trespassing and disorderly conduct.

19. Mr. Wiggins was thereafter taken to Cleveland Clinic Marymount hospital by family where he received medical treatment that included stitches in his face next to his eye.

20. The City of Garfield Heights has a pattern and practice of engaging in excessive force. The City of Garfield Heights also has a pattern and practice of failing to adequately investigate uses of deadly and non-lethal force. Mr. Wiggins's injuries were not investigated by the City of Garfield Heights. To the degree any inquiry was made relative to how Mr. Wiggins sustained his injuries, it was inadequate such that it ratified the unlawful use of force.

21. Further, no officers, including DuPont or Tatulinski were disciplined, counseled or retrained by Garfield Heights based on their use of excessive force and/or their failure to intervene and/or on their failure to properly handle Mr. Wiggins's mental health crisis.

22. As a direct and proximate result of the conduct of the Defendant Officers Dupont and Defendant City of Garfield Heights, Mr. Wiggins has suffered physical harm and damages, some of which may be permanent in nature.

FIRST CAUSE OF ACTION

Excessive Force

23. Paragraphs 1 through 22 are incorporated by reference herein as if fully rewritten.

24. The actions of Officer DuPont constitute an unjustifiable and excessive use of force without legal justification. His actions were deliberately indifferent, reckless, wanton and shocking to the conscience, all of which deprived Plaintiff Wiggins of his civil rights, as

secured by the Fourth and Fourteenth Amendments to the United States Constitution and through 42 U.S. C. §1983.

25. The actions of the Defendant DuPont were committed maliciously and/or in an unreasonable, wanton and/or reckless manner.

26. Defendant DuPont's actions were performed under color of law and deprived Mr. Wiggins of federally protected rights, in violation of 42 U.S.C. § 1983.

27. As a direct and proximate result of the wrongful conduct of Defendant DuPont, Plaintiff Wiggins suffered serious and permanent physical injuries and extreme emotional distress.

SECOND CAUSE OF ACTION

Assault and Battery

28. Paragraphs 1 through 27 are incorporated by reference herein as if fully rewritten.

29. The acts and omissions of Defendant DuPont constitute assault and battery, as well as willful, wanton, intentional, malicious and reckless conduct under the law of the State of Ohio.

30. As a direct and proximate result of the assault and battery, Mr. Wiggins sustained serious and permanent physical injuries and emotional distress.

THIRD CAUSE OF ACTION

Willful, Wanton, Reckless Malicious

31. Paragraphs 1 through 30 are incorporated by reference herein as if fully rewritten.

32. Defendants DuPont and Tatulinski acted in a willfully, wanton, reckless and/or malicious manner such that Mr. Wiggins sustained injury, damages and economic and non-economic losses. Defendant DuPont and Defendant Tatulinski's conduct is not subject to the defense of immunity, set forth in Ohio Revised Code §2744.01 *et seq.,* based on the fact that they acted in a willful, wanton, reckless and/or malicious manner.

FOURTH CAUSE OF ACTION

***Monell* Liability**

33. Paragraphs 1 through 32 are incorporated by reference herein as if fully rewritten.

34. The City of Garfield Heights failed to adequately discipline, train, supervise, or otherwise correct the pattern of unconstitutional conduct engaged in by Defendant Officer DuPont and Officer Tatulinski. The City of Garfield Heights has a pattern and practice of engaging in excessive force. The City of Garfield Heights also has a pattern and practice of failing to adequately investigate uses of deadly and non-lethal force. Mr. Wiggins's injuries were sustained after he was handcuffed and this incident was not investigated by the City of Garfield Heights. To the degree any inquiry was made relative to how Mr. Wiggins sustained his injuries, it was inadequate such that it ratified the unlawful use of force.

35. The City of Garfield Heights' rules, regulations, customs, policies, practices, usages, and procedures of the Defendants were inadequate and unreasonable and were the moving force behind the Constitutional deprivations suffered by Mr. Wiggins.

36. Officer DuPont was not disciplined in any fashion. This sole example is representative of a larger informal policy, pattern and practice of the City of Garfield Heights Police Department condoning, expressly or implicitly, the excessive use of force by its Officers. As a direct and proximate result of the City's failures, Mr. Wiggins's rights were violated and he sustained injuries and damages

FIFTH CAUSE OF ACTION

Intentional Infliction of Emotional Distress

37. Paragraphs 1 through 36 are incorporated by reference herein as if fully rewritten.

39. Through their unreasonable and unlawful conduct, the Defendants either intended to cause Mr. Wiggins emotional distress or knew or should have known that their actions or inaction would result in serious emotional distress. Further, their actions toward Mr. Wiggins were so extreme and outrageous as to go beyond all possible bounds of decency and were intolerable.

40. The Defendants' actions have directly and proximately caused Mr. Wiggins injury from which he suffers and will continue to suffer into the future.

DAMAGES

41. Paragraphs 1 through 40 are incorporated by reference herein as if fully rewritten.

42. As a direct and proximate result of the Defendants' conduct, Plaintiff Mr. Wiggins has suffered physical pain, injury, mental anguish and emotional distress. Some or all of Mr. Wiggins's harm may be permanent in nature.

43. As a direct and proximate result of the Defendants' conduct, Plaintiff Mr. Wiggins has incurred substantial costs and expenses, including but not limited to, legal fees.

47. Mr. Wiggins's physical, mental, and emotional injuries are serious, and are of such a nature that no reasonable person could be expected to endure.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against the Defendants, jointly and severally, for:

(A) Compensatory and consequential damages for all the injuries identified in the amount in excess of one hundred thousand dollars ($300,000.00);

(B) Punitive damages in an amount to be determined at trial for the willful and malicious conduct of Defendant DuPont and Defendant Tatulinski;

(C) Attorneys' fees and the costs of this action and other costs that may be associated with this action; and

(D) Any and all other relief that this Court deems equitable, necessary, and just.

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JURY DEMAND

Plaintiff hereby demands a trial by jury on all issues so triable.

/s/ *Timothy Hess*
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